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NOT FOR CITATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

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ARSAPE S.A.,

NO. C 03-04535 JW

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Plaintiff(s),

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v.

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JDS Uniphase Corporation,

**ORDER DIRECTING PARTIES TO
SUBMIT SUPPLEMENTAL BRIEFING;
RESETTING HEARING DATE AND
FURTHER CASE MANAGEMENT
CONFERENCE**

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Defendant(s).

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Plaintiff Arsape S.A. ("Arsape") filed suit against Defendant JDS Uniphase Corporation ("JDSU") alleging breach of contract and various other claims based primarily upon the cancellation of certain purchase orders between Defendant JDSU and Plaintiff's assignor, Donovan Micro-Tek ("DMT"). JDSU answered and filed counterclaims against Arsape. JDSU also filed a third party complaint against DMT.

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Presently before the Court are Arsape's motion for summary judgment on Count II of its complaint; Arsape and DMT's motion for summary judgment on JDSU's express contractual indemnity claim; Arsape and DMT's motion for summary judgment on JDSU's equitable indemnity/contribution claim; Arsape and DMT's motion for summary judgment on JDSU's claims respecting assignment; and JDSU's motion for summary judgment, partial summary judgment, and partial judgment on the pleadings. Many, if not all, of the motions appear to be predicated upon California law, Canadian law, and the UCC. Interestingly, however, the purchase orders at issue contain a choice of law

1 provision, which states in pertinent part, “[t]he construction, interpretation and performance of this
2 Agreement is governed by the applicable law of the Province of Ontario and Canada.” Yet the
3 parties’ briefs lack any substantial analysis of the force and effect of the choice of law provision, or
4 for that matter any substantial analysis of the choice of law issue in general.

5 The Court is not prepared to proceed with the various pending motions until the choice of law
6 issue has been resolved. Accordingly, the parties are directed to submit supplemental briefing that
7 specifically sets forth which law applies to which claims and defenses, and why. The supplemental
8 briefing shall be filed and served no later than September 9, 2005. The hearing date for the pending
9 motions is continued to October 3, 2005, at 9:00 a.m. The further case management conference is also
10 continued to October 3, 2005, 9:00 a.m.

11 Dated: August 19, 2005

12 /s/James Ware
JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Gaylord A. Virden gavyls62@msn.com
3 Jeffrey J. Lederman jlederman@winston.com
3 Nicole P. Dogwill ndogwill@winston.com

4 **Dated: August 21, 2005**

5 **Richard W. Wieking, Clerk**

6 By: /s/JW Chambers
7 **Ronald L. Davis**
7 **Courtroom Deputy**